

Shawn Talbot: Rice
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U.S. DISTRICT COURT
 DISTRICT OF NEVADA

UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

UNITED STATES OF AMERICA

Plaintiff / Respondent,

vs.

SHAWN TALBOT RICE

Defendant / Petitioner

Case Number: 2:10-cr-00520-JCM-RJJ-1

Defendant Shawn Rice's
 Reply to Government's
 Opposition to Motion to
 Dismiss Indictment due to
 Speedy Trial Act Violation

Defendant Shawn Talbot Rice ["Mr. Rice"], appearing in pro-per, files this reply to the Government's response to his Motion to Dismiss for a Speedy Trial Act violation filed on July 16, 2012. See Doc. 268.

The gist of the Government's opposition to Mr. Rice's motion is this: because Mr. Rice was a "fugitive from justice" and allegedly "absent" (as defined by subsection (h)(3)) on the day set for trial" and "gone for a period of more than 21 days, § 3161(k)(1) requires that the speedy trial clock be reset to zero." To paraphrase the late, great broadcaster Paul Harvey, "here's the *rest* of the story."

In the first place, no court ever made a finding that Mr. Rice was a "fugitive from

1 justice” at any time.¹ The Government’s allegation is both wrong and specious. “Mere
2 absence from the jurisdiction in which a crime occurred does not render the suspect a
3 fugitive from justice; he must be found to have absented himself from the jurisdiction with
4 the intent to avoid prosecution.² Additionally, the Government avoided any allegation of
5 an actual trial date on which Mr. Rice was supposedly “absent.” That was because there
6 was no such trial date and the Government was hoping to slip this by the court. The
7 Government argues that Mr. Rice was absent for 654 days between March 9, 2010, when
8 the District Court issued a warrant for his arrest, and January 19, 2012 when he appeared
9 before the District Court following his arrest and transport from the District of Arizona to
10 the District of Nevada.³ But he could not have possibly been “absent” for trial date within
11 the meaning of the statute because his trial date had been repeatedly continued before his
12 case was ever called. Before March 9, 2010 when the warrant was issued, trial had already
13 been continued until June 21, 2010.⁴ Before trial could be called on June 21, 2010, the
14 District Court entered what became a series of four more continuances, the last of which
15 was entered on December 17, 2010 continuing trial as far out as March 28, 2011.⁵ Trial
16 was never called on that date either.
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24 ¹ See 18 U.S.C. § 3290.

25 ² *Donnell v. United States*, 229 F.2d 560, 562-65 (5th Cir.1956).

26 ³ Doc. 133, 218.

27 ⁴ Doc. 126, 127.

28 ⁵ Doc. 156, 162, 178, 187.

1 After Mr. Davis, Mr. Rice's co-defendant changed his plea to guilty on March 25,
2 2011, counsel for Mr. Rice filed a stipulation to continue trial for at least another 120 days
3 which the District Court granted on February 22, 2011 on top of all the previous
4 continuances.⁶ The Government primarily relies on 18 U.S.C. § 3161(k)(1) which
5 provides:
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8 If the defendant is absent (as defined by subsection (h)(3)) on the day set for
9 trial, and the defendant's subsequent appearance before the court on a
10 bench warrant or other process or surrender to the court occurs more than
11 21 days after the day set for trial, the defendant shall be deemed to have first
12 appeared before a judicial officer of the court in which the information or
indictment is pending within the meaning of subsection (c) on the date of
the defendant's subsequent appearance before the court.

13 But for subsection (k)(1) of the Speedy Trial Act to have reset the trial clock back to zero,
14 Mr. Rice would have had to have first fit the definition of "absent" as that term is defined
15 in subsection (h)(3)(B):
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18 For purposes of subparagraph (A) of this paragraph, a defendant or an
19 essential witness shall be considered absent when his whereabouts are
20 unknown and, in addition, he is attempting to avoid apprehension or
21 prosecution or his whereabouts cannot be determined by due diligence. For
22 purposes of such subparagraph, a defendant or an essential witness shall be
23 considered unavailable whenever his whereabouts are known but his
24 presence for trial cannot be obtained by due diligence or he resists appearing
25 at or being returned for trial.

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6 Doc. 191, 229, 230.

1 Thus for the Government's argument to hold sway, two conditions precedent would be
2 necessary: (1) that there was an actual trial date on which Mr. Rice had been "absent" and
3 (2) that Mr. Rice was "absent" within the statutory definition. *Neither condition ever*
4 *existed.* First, Mr. Rice already explained that there was never an actual trial date set
5 during his absence from the District of Nevada because the court kept continuing the trial
6 date. Secondly, there is no evidence that Mr. Rice's whereabouts were actually unknown
7 and what due diligence, if any, the Government exercised in the 654 days he was allegedly
8 absent. Lastly, the Government has offered no evidence that Mr. Rice had been
9 "attempting to avoid apprehension or prosecution." In fact, he was arrested at his
10 residence in Arizona which he had never abandoned since he had been first arrested
11 following his indictment. The Government has failed to explain why they were unable to
12 find him there and arrest him sooner than the more than 600 days it ultimately took them.
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15 CONCLUSION

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17 The Government's argument is opposition to Mr. Rice's motion to dismiss is entirely
18 without merit. Mr. Rice was never "absent" within the meaning of the statute. Accordingly, the
19 initial trial clock was never affected and never reset to zero as the Government contends. At the
20 very least, due process would strongly suggest that an evidentiary hearing would be appropriate to
21 flush out all facts that support either party's position which are not part of the record of this case.
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23 Because the Government failed to bring Mr. Rice to trial within 70 "nonexcludable"
24 days, it violated the Speedy Trial Act (the "STA") and his statutory right to a speedy trial. Mr.
25 Rice is now entitled to a mandatory order of dismissal of the charges against him as a matter of
26 law. 18 U.S.C. § 3162(a)(2) provides "[i]f a defendant is not brought to trial within the time limit
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1 required by § 3161(c) as extended by § 3161(h), the information or indictment shall be dismissed
2 on motion of the defendant.” Mr. Rice reaffirms his position in this matter as presented in his
3 motion to dismiss. He was not brought to trial within 70 non-excludable days according to the
4 Speedy Trial Act and is thus entitled to an order of dismissal.
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11 Respectfully Submitted this _____ day of _____ 2012.

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14 Shawn Rice, Pro per
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18 **Copies to:**

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1 Respectfully Submitted, this 18 day of July 2012.

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3 Shawn Talbot Rice, Pro Per

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